Remarks/Arguments

Claims 37-44 remain pending in this Application. In the Office Action mailed on April 6, 2005, the Examiner requested the claims be restricted to one (1) of four (4) inventions that include:

I. Claims 1-18, drawn to a gel, classified in Class 523, subclass 102;

II. Claim 19-27, drawn to scented article, classified in Class 430, subclass 18;

III. Claim 28-36, drawn to a method of preparing a scented gel carrier, classified in Class 252, subclass 315.01; and

IV. Claims 37-44, drawn to a method of applying a scent to an article, classified in Class 424, subclass 480.

Restriction/Election

The Examiner requested that the claims be restricted to one of four inventions. Applicants hereby provisionally elect *with traverse* Group IV—Claims 37-44, drawn to a method of applying a scent to an article. Traversal is based on the fact that a thorough search of the subject matter of Claims 37-44 as well as Claims 1-36 would necessarily include all art classifications 523, 430, 252 and 424 cited by the Examiner. As such, examination of Claims 1-36 on the merits would impose no additional burden on the Patent Office. *See* MPEP 803.

Rejections

Claims 37-44 are pending in this Application. The Office Action mailed on April 6, 2005, includes the following rejections:

1. Claims 37-39 and 41-44 are rejected under 35 U.S.C. 102(b) as anticipated by Bootman et al.

2. Claim 40, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bootman et al. in view of Bievenue et al.

Applicants respectfully address the basis for each of the Action's rejections below.

Claim Rejections – Claims 37-39 and 41-44 are rejected under 35 U.S.C. 102(b)

The Action rejects 37-39 and 41-44 under 35 U.S.C. 102(b) as anticipated by Bootman, et al., (Bootman), which is said to disclose the present invention.

Applicants respectfully submitted that the cited reference fails to meet the standard of teaching all elements of the claimed invention either explicitly or impliedly, and thus does not anticipate any of the rejected claims. See MPEP § 2131. Applicants respectfully submit that Bootman does not anticipate Applicants' claims 37-39 and 41-44, because Bootman does not identically disclose Applicants' invention.

Bootman relates to label-like, hermetically-sealed perfume pouch samplers with artwork on their top surface and a pressure sensitive adhesive bottom surface to attach the pouch labels to pages of a magazine or other mailer, providing an efficient method of mass distribution of perfume samples. (Abstract). Bootman does not disclose a scented gel, let alone, the application of the gel to a substrate.

Additionally, Bootman discloses a tightly-sealed, peelable perfume pouch label which includes a pressure sensitive adhesive back and a process for manufacturing such pouch label which facilitates its attachment to a magazine or other mailer. The pouch label (or pouch if no pressure-sensitive adhesive back is included) contains perfume which may be stored in a perfume-doped layer carried between two barrier members which prevent unwanted release or migration of fragrance or its oils. The purpose of the perfume-doped layer is to stop unwanted release or migration of fragrance or its oils. After the top barrier member is peeled from the pouch label, fragrance is released from the polymer gel, the alcohol quickly evaporates, and the remainder of the polymer rapidly (e.g., in less than about one minute) dries to a solid or semi-solid film. (Summary).

Applicants respectfully submit that Claims 37-39 and 41-44 are not anticipated by Bootman, et al. The inventions cited in the reference and the instant invention are different; therefore the reference does not identically disclose Applicants' claimed invention. Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. 102(b).

Therefore, Bootman does not teach the present invention, nor could it be modified to achieve the long-lasting scent that is achieved and claimed.

Claim Rejections – Claim 40, is rejected under 35 U.S.C. 103(a)

The Action states Claim 40, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bootman et al. in view of Bievenue et al. (Bievenue). The Action states all the claim limitations except that the gel carrier is applied by spraying is taught by Bootman and that Bievenue teaches that the gel carrier may be applied by spraying. The Action states that it would have been obvious to one of ordinary skill in the art to spray the gel of Bootman to "provide accurate positional displacement relative to the article being coated" as taught by Bievenue in column 1 line 23-24.

Nonanalogous prior art

The sited references are nonanalogous art. The MPEP states that, "to rely on a reference under 35 USC 103, it must be analogous prior art." MPEP 2141.01(a). Applicants submit that neither Bootman, nor Bievenue is in the same field as the Applicants', nor is either reference reasonably pertinent to the problem the instant invention addresses.

Bievenue relates to a compact spray valve that provides an extended atomizing air cap for reaching between tightly spaced electronic components and the resulting spray pattern can be controlled to provide a narrow line spray pattern with clearly defined edges. Bootman relates to a label-like, hermetically-sealed perfume pouch samplers with artwork on their top surface and a pressure sensitive adhesive bottom surface to attach the pouch labels to pages of a magazine or other mailer, providing an efficient method of mass distribution of perfume samples. Neither of the references even remotely relate to compositions and methods that permit the deposition, printing or spraying of the scented gel carrier of the present invention to use scents that are water-soluble oil-soluble or even alcohol based.

Furthermore, a prima facie case of obviousness has not been established. In order to establish a prima facie case of obviousness, three criteria must be met: (1) there must be some suggestion or motivation in the prior art to modify the reference or to combine reference teachings as proposed, (2) there must be a reasonable expectation of success, and (3) the prior art or combined references must teach or suggest all the claim limitations. MPEP § 2143; In re Vacek, 947 F.2d 488 (Fed. Cir. 1991). "The prior art must suggest the desirability of the claimed invention." MPEP § 2143.01. Both the invention and the prior art references must be considered as a whole. MPEP § 2141.02. Applicants respectfully submit that Claims 40

is not obvious over the cited art and are, therefore, allowable under 35 U.S.C. 103(a) for the reasons stated below.

There is no teaching or suggestion in the prior art to modify the reference as proposed.

Obviousness can only be found where there is some teaching, suggestion, or motivation to modify a reference in the manner proposed, found either in the prior art itself or in the knowledge generally available in the art. See MPEP § 2143.01; In re Fine, 837 F.2d 1071 (Fed. Cir. 1988); In re Jones, 958 F.2d 347 (Fed. Cir. 1992). In addition, obviousness can only be found under a combination of references where there is some teaching, suggestion, or motivation to do so, found either in the references themselves or in the knowledge generally available in the art. See MPEP § 2143.01; In re Fine, 837 F.2d 1071 (Fed. Cir. 1988); In re Jones, 958 F.2d 347 (Fed. Cir. 1992). Further, the mere fact that references can be combined or modified does not necessarily make the combination obvious unless the prior art suggests the combination. See MPEP § 2143.01; In re Mills, 916 F.2d 680 (Fed. Cir. 1990). Finally, simply stating that a claimed modification of the prior art would have been "obvious to a person of ordinary skill in the art at the time the invention was made" because all aspects of the claimed invention were individually known in the art is not enough to establish a prima facie case of obviousness without some objective reason to combine the teachings. MPEP § 2143.01; Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993).

Bievenue relates to a compact spray valve that provides an extended atomizing air cap for reaching between tightly spaced electronic components and the resulting spray pattern can be controlled to provide a narrow line spray pattern with clearly defined edges. Bootman relates to a label-like, hermetically-sealed perfume pouch samplers with artwork on their top surface and a pressure sensitive adhesive bottom surface to attach the pouch labels to pages of a magazine or other mailer, providing an efficient method of mass distribution of perfume samples.

Applicants respectfully submit that a person skilled in the art would not combine the teachings of Bootman and Bievenue because they teach separate and distinct processes that are totally unrelated with one another. Based on the preceding arguments, Applicants respectfully submit that there is no teaching, suggestion or motivation found in Bievenue or

Bootman to combine them in such a way to cure the deficiencies of these references and render the amended claims unpatentable under 35 U.S.C. 103(a).

There is no expectation of success.

In order to establish a prima facie case of obviousness based on a combination of references, there must be a reasonable expectation of success. For the reasons stated above, applicants respectfully submit that a person of ordinary skill in the art would have no reasonable expectation of success to modify or combine Bootman and/or Bievenue to produce a composition and/or method that permit the deposition, printing or spraying of the scented gel carrier. Bootman relates to a label-like, hermetically-sealed perfume pouch, while Bievenue relates to a compact spray valve there is no indication of how to combine them let alone any expectation of success.

The cited art does not teach or suggest all the claim elements.

Unless the reference(s) teach or suggest all the claim limitations, obviousness cannot be found. MPEP § 2143.03. Further, once an independent claim is found to be non-obvious under 35 U.S.C. 103, then any claim which depends from that independent claim is also non-obvious. MPEP § 2143.03; In re Fine, 837 F.2d 1071 (Fed. Cir. 1988). For the reasons stated above, applicants respectfully submit that the cited references do not disclose, teach or suggest all the claim elements of Claim 40.

Furthermore, a prima facie case of obviousness has not been established as the cited references lack support for the teaching of all of the elements of the present invention in the rejected claim, lacks a reasonable expectation of success, and lacks the motivation or suggestion to combine the elements. Accordingly, Claim 40 is not anticipated by, or rendered obvious from either Bootman, Bievenue or their combination. Therefore, Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. 103(a).

Conclusion

In light of the remarks and arguments presented above, Applicants respectfully submit that Claims 37-44 in the Application are in condition for allowance. Favorable consideration and allowance of the pending claims is therefore respectfully requested.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,

Chainey Singleton
Registration No. 53,598
ATTORNEY FOR APPLICANTS

CHALKER FLORES, LLP
12700 Park Central Ste.455
Dallas, TX 75251
214.866.0001 Telephone
214.866.0010 Facsimile

CPS